IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

The New India Assurance Company Ltd.

Vs.

Smt.Chanderi & others

S.B.CIVIL MISC. APPEAL NO.599/1994

Against the award dated 09.08.1994 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.71/1993.

Date of Judgment : 19th March 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant
Mr.J.Gehlot for the respondents Nos.1 to 6.

BY THE COURT:

This appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 ['the Act'] being aggrieved of the award dated 09.08.1994 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.71/1993.

By the award impugned, the Tribunal has found that the victim Suwalal met with his untimely end on receiving fatal

injuries when a trailer bearing registration No. RJE 2788 attached to and driven by a tractor bearing registration No.RJ06 R 1713 turned over; has awarded compensation in the sum of Rs.1,32,120/- together with interest at the rate of 12% per annum from the date of filing of claim application to the dependents of victim; and has rejected the contention of the insurer for its exoneration.

In this appeal, the appellant-insurer contends that the liability for compensation in the present case could not have been mulcted upon it essentially for the reasons that the said trailer RJE 2788 was not insured; that the tractor in question was insured only for agricultural use; and that the risk in relation to the deceased Suwalal who was travelling in the trailer as a labourer was not covered.

A brief reference to the background facts would suffice: The wife, two minor children, parents and grand parents of the victim Suwalal, about 25 years in age and said to be earning as a labourer about Rs.1,200/- per month, made the application seeking compensation with the averments that the accident in question occurred on 26.02.1993 at about 6.00 p.m. on the road between Saredi to Chitamba within the jurisdiction of Police Station Kareda, District Bhilwara; that the deceased had gone as a labourer on the tractor bearing registration No. RJ06 R 1713 and the trolley bearing

registration No.RJE 2788; that they were returning from Bariyala Ka Kheda-Dudinadi (pond) after taking black earth; near Chitamba the tractor-trolley skidded down the road due to rash and negligent driving and turned over; that the victim Suwalal was crushed beneath and was severely injured and other labourers also sustained injuries; and that Suwalal succumbed to injuries on the way to hospital. The claimants averred that the accident occurred for rash and negligent driving by the non-applicant No.2 and on the date of accident, tractor No. RJ 06 R 1713 was insured with the non-applicant No. 3 (the appellant) and was being plied in the control and directions of the non-applicant No.1 and hence asserted liability in the non-applicants, the driver, owner and insurer of the said tractor.

The non-applicant No.3, insurer, while generally denying the claim averments, contended that the owner was not holding valid registration; that the driver was not holding valid driving licence; that the tractor was insured for agricultural use but at the time of accident was being used for non-agricultural purposes; that the vehicle was a tractor and the deceased was not riding as a labourer but was travelling as a passenger and that was in violation of policy conditions; that there was no premium charged in relation to a labourer; that only the tractor was insured and not the trailer and the alleged labourer was

travelling in the trailer and, therefore, his liability was not to be indemnified by the insurer; and that insurer would reserve its right to adopt all the defences available to the vehicle owner. Another objection was raised that the non-applicant No. 1 Madanlal obtained the insurance of tractor on 22.02.1993 whereas its registration was transferred in his name only on 02.03.1993 and, therefore, Insurance Company was not responsible towards the accident that occurred on 26.02.1993.

The Tribunal proceeded to frame the following issues for determination of the questions involved in the case:-

> "1. क्या मृतक सुवा लाल विपक्षी सं. एक के स्वामित्व के तथा विपक्षी सं. 3 के पास बीमित ट्रेक्टर नंबर आर.जे.06/आर-1713 जिसके साथ ट्रोली नंबर आर.जे.ई. 2788 जुडी हुई थी, में मजदूर के रूप में यात्रारत था ?
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> ..प्रार्थीगण
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> 2. क्या प्रार्थीया सं. एक के पति, प्रार्थीगण सं. 2 व 3 के पिता प्रार्थीगण सं. 4 व 5 के पुत्र व प्रार्थीगण सं. 6 व 7 के प्रपोत्र सुवा लाल की मृत्यु विपक्षी सं. एक के स्वामित्व व विपक्षी सं. 3 के पास बीमित ट्रेक्टर नंबर आर.जे. 06/आर-1713 को विपक्षी सं. 2 द्वारा तेजी व उतावलेपन से चलाये जाने के कारण हुई ?
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> ..प्रार्थीगण
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> 3. क्या ट्रोली नंबर आर.जे.ई. 2788 भी विपक्षी सं. 3 के पास बीमित थी ?
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> ..प्रार्थीगण
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> 4. यदि विवाद्यक संख्या 3 का उत्तर ना है तो इसका क्या प्रभाव है ?
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> .. विपक्षी सं. 3

4ए.क्या इस दुर्घटना के समय ट्रेक्टर चालक के पास वैध ड्राईविंग लाईसेंस नहीं था । यदि हां, तो इसका क्या प्रभाव है?
..विपक्षी सं. 3

5. क्या उक्त ट्रेक्टर बीमा पालिसी की शर्तों के विपरीत अकृषि कार्यों के उपयोग मेंलाया जा रहा था । यदि हां, तो इसका क्या प्रभाव है?
..विपक्षी सं. 3

6. क्या दुर्घटना के दिन उक्त ट्रेक्टर विपक्षी सं. एक के नाम पर नहीं था। यदि हां, तो इसका क्या प्रभाव है ?
..विपक्षी सं. 3

7. क्या प्रार्थीगण विपक्षीगण से या किस विपक्षी से क्षतिपूर्ति के रूप में 5,90,000 रू. या अन्य कोई राशि प्राप्त करने का हकदार है?
..प्रार्थीगण

8. अनुतोष ?"

In oral evidence, the claimant No.1 Smt. Chanderi was examined as AW-1 and relevant documentary evidence was produced as Ex.1 to Ex.8. On behalf of the insurer, an Assistant of their Regional Office at Bhilwara, Mr. B.L.Deedwania was examined as NAW-1 and the proposal form, insurance policy and terms of policy were produced as Ex.A/1, A/2 and A/3 respectively.

The Tribunal held in issue No.1 on the basis of evidence available on record that the deceased was travelling as a labourer in the trailer RJE 2788 that was attached to the tractor RJ06 R 1713. In issue No.2 the Tribunal held that the accident occurred for rash and negligent driving by the non-

applicant No.1. In issue No.3 the Tribunal held that the trailer RJE 2788 was not insured with the non-applicant No.3 but then observed in issue No.4 with reference to a decision of this Court in Sajid Mian Vs. Ganga and others: 1990 ACJ 54 that answer to issue No.3 in the negative would not have any adverse effect on the rights of the claimants. Issue No.4A was decided against the insurer with reference to the driving licence Ex.6. In issue No.5 the Tribunal observed that the witness B.L.Deedwania never stated that the tractor was insured only for agricultural use nor such fact appeared from the insurance policy Ex.A/2 and the proposal form Ex.A/1. The question in issue No.6 was held to be of no relevance and in issue No.7, the Tribunal assessed total loss of the claimants at Rs.1,32,120/-. In this manner, the Tribunal proceeded to make the award in favour of the claimants and against the non-applicants jointly and severally and allowed interest at the rate of 12% per annum.

Assailing the award aforesaid, it has been strenuously contended by learned counsel for the appellant-insurer that the Tribunal has been in error in mulcting liability upon the appellant in this case particularly when the deceased sustained fatal injuries while travelling in, and due to capsizing of, the trailer that was not insured at all. Learned counsel further contended that the Tribunal has been in error in not

considering that the tractor was insured only for agricultural and forestic use and was being used for other purposes as is borne out from the admitted case of claimants and hence, no liability could have been fastened on the appellant. Learned counsel also contended that Section 147 of the Act specifically provides insurance coverage in respect of classes of persons and risk of labourer is not compulsorily required to be covered and no additional premium having been paid, the Tribunal has been in error in fastening liability in his relation on the appellant. Learned counsel referred to the definition of 'trailer' as contained in Section 2 (46) and that of 'motor vehicle' as contained in Section 2(28) of the Act and also referred to the decisions in National Insurance Company Ltd. Vs. V.Chinnamma and others: 2004 (3)TAC 577 (SC); Sunita Bai Vs. Babulal & anr.: II (2006) ACC 511; National Insurance Company Ltd. Vs. Thirakappa Ramappa Itagi and another: 2001 (3) TAC 490 (Kant); Desh Raj & another Vs. Khushi Ram and others: II (2006)ACC 651; and Ramesh & anr. Vs. Kamathchi Anmal & 4 Ors.: II (2000) ACC 749.

Per contra, learned counsel for the respondents has contended with reference to the finding on issue No. 5 that the appellant-insurer has failed to establish that the tractor in question was insured for agricultural use only and, therefore, the Tribunal has not committed any error in fastening liability

upon the appellant. Learned counsel submitted that the insurer cannot question its liability in relation to the trailer attached to a tractor insured by it and referred to the decision of this Court in Sajid Mian (supra) and so also of the Hon'ble Supreme Court in Nagashetty Vs. United India Insurance Co. Ltd. and others: II (2001) ACC 303 (SC). Learned counsel also submitted that if travelling of the labourer in the tractor-trailer was a breach of policy conditions, such breach was specifically required to be proved by the appellant insurer and it having failed to do so, the Tribunal has not erred in making insurer jointly and severally liable and referred to the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Swarn Singh and others: I (2004) CLT 1 (SC) and of this Court in Ram Lal Vs. Hasti Mal: 2005 (1) DNJ (Raj.) 3.

Learned counsel for the appellant has rejoined with the submissions that Sajid Mian's case (supra) where the trailer was not separately registered shall have no application to the present case where the trailer was having separate registration. Learned counsel contended that no liability in relation to the tractor in question could be fastened on the appellant unless the same was separately insured. Learned counsel further submitted that in Nagasheety's case (supra) insurance policy was issued for the tractor and extra premium

was paid for the trailer and the essential question in the said case was in relation to the validity and effectiveness of the driving licence.

Having given a thoughtful consideration to the rival submissions, having scanned through the entire record, and having examined the law applicable to the case, this Court is of opinion that the impugned award cannot be sustained insofar it relates to the liability of the appellant-insurer; and, to that extent, the appeal deserves to be allowed.

The Tribunal has stated a cursory finding in issue No.5 that from the insurance policy Ex.A/2 and proposal form Ex.A/1 it was not borne out if the tractor in question was insured only for agricultural use. The finding appears not to be in conformity with the documentary evidence available on record. The proposal form Ex.A/1 distinctly states about the use of the vehicle in question as 'agriculture & forestic use only'. In relation to and upon the said proposal Ex.A/1, the insurance policy Ex.A/2 was issued on the terms and conditions as contained in Ex.A/3. With the documentary evidence having been produced on record, the observations of the Tribunal that contents thereof were not further stated by the witness NAW-1 B.L.Deedwania do not appear to be of sound and proper appreciation of evidence.

Additionally, it has been the consistent case of the appellant-insurer that the trailer bearing registration No.RJE 2788 was not at all insured with it; and this fact has been found proved by the Tribunal in its finding in issue No.3. Coming to this aspect later, this Court is of opinion that when the liability has been sought to be fastened on the appellant-insurer only on the basis of insurance coverage of the tractor aforesaid; and when the said tractor was insured with reference to its agricultural & forestic use only; and, undeniably, the tractor-trailer were not being used for such purposes, the Tribunal was not justified in fastening liability on the insurer. The decision of the Hon'ble Supreme Court in V.Chinnamma's case (supra) clinches the issue that when the tractor is meant to be used for agricultural purposes, the trailer attached to the tractor is necessarily required to be used for agricultural purposes unless registered otherwise; and that the trailer, even if answers to the description of a 'goods carriage', the risk in relation to a person carried in the trailer would not be covered. This Court is of opinion that with the law settled by the Hon'ble Supreme Court in V.Chinnamma's case in no uncertain terms, no liability could be fastened on the appellant-insurer when the tractor-trailer were being used for non-agricultural purposes. The Hon'ble Supreme Court in V.Chinnamma's case (supra) has held,-

> "17. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2 (14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the goods carriage" as contained in Section 2 (14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24th November, 1991, i.e. much prior to coming into force of 1994 amendment."

With reference to the above, it may also be pointed out that even if trailer in the present case would answer to the description of goods carriage, liability upon insurer would not arise firstly because no separate insurance coverage was taken for the trailer; and secondly, for the deceased being a labourer on the said trailer in whose relation neither any compulsory coverage was required nor any coverage was

taken at all. The decision of Hon'ble Madhya Pradesh High Court in Sunita Bai Vs. Babulal and another (supra) based on the decision of the Hon'ble Supreme Court in V.Chinnamma's case is also to the effect that when the trailer was meant to be used for agricultural purposes and was found being used for other purposes, as per policy, the Insurance Company would not be liable to indemnify the insured.

Apart from the aforesaid, the fact remains that the trailer bearing registration No.RJE 2788 was not at all insured with the appellant-insurer. The Tribunal has also found this fact proved in issue No.3. When the insurance coverage in the present case has been that of the tractor alone and the trailer separately registered was carrying no insurance coverage at all, this court is clearly of opinion that no liability could have been fastened on the appellant-insurer for the loss caused due to use of the said trailer. It has been held by the Hon'ble Karnataka High Court in the case of National Insurance Company Ltd. Vs. Thirakappa Ramappa Itagi and another (supra) that when the insurance cover has been issued to the tractor only, it cannot automatically be extended to the trailer; and the trailer is required to be separately insured. Similarly in the case of Desh Raj & another Vs. Khushi Ram and others (supra), Hon'ble Himachal Pradesh High Court has held that the passengers could not be carried in the tractor or tailer and

when the trailer has not been insured, the insurer would not be liable.

So far the decision of this Court in Sajid Mian (supra) is concerned, the submissions of learned counsel for the appellant appear to be correct that the same would not apply when it is noticed that therein the offending trailer was not a separately registered vehicle. In the present case, as noticed above, the trailer was a separately registered vehicle and on the facts of this case, this Court is unable to countenance the proposition that insurance coverage of the tractor might cover the trailer also. In the case of Nagashetty (supra) relied upon by learned counsel for the respondents, the point in issue was entirely different where the person holding licence to drive a tractor was driving a tractor with attached trailer; and the Hon'ble Supreme Court held that if a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. Moreover, in Nagashetty the insurance policy was issued for the tractor and extra premium was paid for the trailer. The said case obviously has no application to the facts of the present case.

It may be reiterated that even if it be assumed for the sake of arguments upon the decision of this Court in Sajid

Mian (supra) that insurance coverage of the tractor could be extended to the trolley too, then again, the position would nevertheless remain that insurance coverage of the tractor was for agriculture and forestic use only; and that would not cover the risk when the tractor was being used for non-agricultural purposes and, as a necessary corollary, would not cover the risk of a labourer sitting in the trailer. The other decisions relied upon by the learned counsel for the respondents in the case of Swarn Singh and Ramlal (supra) have no relevance for the questions at hand.

In the aforesaid view of the matter, this Court is of opinion that the Tribunal has been in error in fastening the liability upon the appellant; and the findings to that extent deserve to be and are set aside.

The appeal is allowed to the extent indicated above and the impugned award, insofar it fastens the liability upon the appellant-insurer is set aside. It is noticed that award of compensation was made in the sum of Rs.1,32,120/- and an amount of Rs.25,000/- wherefrom was required to be deducted as paid under No Fault Liability; further an amount of Rs.25,000/- was deposited by the appellant while filing the present appeal wherein execution of award against the appellant was stayed by this Court on 03.02.1995 and the stay order was confirmed on 14.01.2002. In the overall facts and

circumstances of the case, while this appeal is being allowed, it is made clear that the amount so far paid by the appellant would be recovered only from the vehicle owner and not from the claimants. However, for the remaining part of the award, the claimants shall be entitled to get the award executed against the non-applicants Nos.1 and 2 only. In the circumstances of the case, parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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